

Present Legal Framework to Regulate Social Media in India

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Abstract

Social media become a challenge for modern society, one it is imperative for the day to day social interactions, commercial transactions and management of affairs other hand a serious threat to civil society and created new means of criminal activity for which traditional laws are either insufficient too weak to prevent them, in this paper relevant laws and their provisions are discussed with the help of existing laws and decided case laws.

We shall have a look at different legal frameworks particularly in India, aimed at regulating social media. We will look at some measures of telecommunications regulations. From an Indian perspective, we shall discuss about the provisions of the Indian Penal Code, the IT Act and the rules under it.

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Social Media and Telecommunications Regulation

Despite the most well-known fact that social media isn't strictly in the telecommunications sector, many of on social networking sites include telephone and other telecoms services. For instance, Facebook now allows users to hold live video chats inside the social network owing to a collaboration with Skype. Google+ includes the Google Voice product to make it simple for its associated users to have audio and video chats.

There are several instances where telecom regulators have passed regulations governing social media use. For example, the Bahrain Telecommunications Regulatory Authority has provided advice on how to behave on social media. False information or anything that is violent, pornographic, or otherwise offensive should not be included in tweets, reposts, or retweets. To ensure that social media adheres to the same norms as conventional media, the guideline was developed. The principles of respectable journalism are demonstrated to apply (content vetting, audience shielding from graphic images), but social media broadcasting does not.

Numerous countries have gone further to ban access to social media platforms in addition to issuing laws and guidelines in response to events or problems occurring within their own borders. Some blocks have been temporarily put in place to handle a particular incident or piece of content.

The Pakistan Telecommunications Authority (PTA), the country's telecom regulator, banned access to the social networking site on May 19, 2010, in response to a ruling by Pakistan's highest court. The prohibition lasted the full two weeks. The request to impede comes from a "Draw Mohammed Day" competition on a Facebook page. When Facebook learned of this, they restricted access to the website in several nations, including Pakistan. The PTA was eventually compelled by the court to unblock the website. The Bangladesh Telecommunications Regulatory Commission (BTRC) announced in May 2010 that it will temporarily restrict access to Facebook due to "obnoxious photographs," which included depictions of Mohammed and other prominent individuals in the nation as well as links to pornography. The restriction was also put into place in response to "Draw Mohammed Day."

The Telecommunications Regulatory Authority (TRA) of the United Arab Emirates banned several Facebook and MySpace features that promoted online dating in 2008. Several other locations were still reachable. In April 2011, in reaction to escalating turmoil, the Uganda Communications Commission encouraged ISPs to temporarily implement limits on communication on social networking sites including

Facebook and Twitter. Twitter usage for political campaigning was restricted in Cameroon in March 2011 to stop opposition members from doing so. To prevent protesters from organizing and disseminating information on Twitter, Egypt outlawed the social media network in January 2011.

Position in India

There is currently no set body of law in India governing the use of social media by common people. Earlier Indian Penal Code was applicable in cases of computer-related matters also. Now, the entire regime of information technology in India is governed mainly by Information Technology Act, 2000 and the rules framed thereunder. However for government agencies, the Department of Electronics and Information Technology has issued certain recommendations regarding the use of social media by government agencies. Let's have a brief overview of all these.

Indian Penal Code

Before the advent of the IT Act, 2000 the activities on computers were also under the purview of the Indian Penal Code if the act fell within its ambit. Some relevant provisions are:

- Section 295A: Defaming religion or religious beliefs on purpose.
- Section 153A: encouraging hostility between groups based on race, religion, etc.
- Section 499 deals with defamation, according to this, anybody who makes a defamatory comment in writing or verbally to destroy someone's reputation faces legal consequences. Sections 499 and 500 of the law are the primary safeguards against social media abuse.
- Section 505 deals with statements that incite public annoyance.
- Section 509: Disrespecting women's modesty.
- Section 124A: deals with sedition, which means that a criminal act that encourages opposition that has the potential to bring down the government.

The Information Technology Act

The Information Technology Act, of 2000 was enacted by the Parliament in view of the resolution taken by the U.N. General Assembly in 1997 to recognize and adopt practices of e-commerce. This legislation is the first and only enactment that deals with the legal element of electronic and digital advances and makes provisions for their recognition and control. Though the primary purpose of this Act was e-commerce, the Act also aims to regulate the content of publications and the kind of communication that should be permissible through electronic modes. After the case of *Avinash Bajaj v. State (NCT of Delhi)*¹, the regulations against obscenity,

intermediary liability and safeguarding were was strengthened and the Act was amended. This Act also deals with the regulatory mechanism of the Internet services and cyber offenses. Chapter XI of the Act deals with cyber crimes but there is no exhaustive list of offences because there is day to day increase in new types of cyber crimes with new methods to commit them. Some of the provisions of the IT Act relevant to social media are extracted below:

Section 66A².

“Punishment for sending offensive messages through communication service, etc.—Any person who sends, by means of a computer resource or a communication device,—

- (a) any information that is grossly offensive or has a menacing character; or
- (b) any information which he knows to be false, but to cause annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, persistently by making use of such computer resource or a communication device;
- (c) any electronic mail or electronic mail message to cause annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages, shall be punishable with imprisonment for a term which may extend to three years and with a fine.

Explanation— For the purposes of this section, the terms electronic mail and electronic mail message mean a message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message.”

According to this section, if any person who sends a message by any means of communication device with any information that is offensive and if specially created to annoy, or spread hatred, criminal intimidation shall be punished with imprisonment which may extend to a term of three years and a fine. This section has been held unconstitutional by the Supreme Court in *Shreya Singhal v. Union of India*.³

“Punishment for publishing or transmitting obscene material in electronic form⁴— Whoever publishes or transmits or causes to be published or transmitted in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either

description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with a fine which may extend to ten lakh rupees.

Punishment for publishing or transmitting of material containing sexually explicit acts, etc., in electronic form.—⁵Whoever publishes or transmits or causes to be published or transmitted in the electronic form any material which contains sexually explicit act or conduct shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees.”

Thus sections 67 and 67A provide for control of obscene material on computers which is equally applicable to social media.

“Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc., in electronic form⁶.—Whoever,—

- (a) Publishes or transmits or causes to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit act or conduct; or
- (b) Creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner; or
- (c) Cultivates, entices or induces children to online relationships with one or more children for and on sexually explicit acts or in a manner that may offend a reasonable adult on the computer resource; or
- (d) Facilitates abusing children online, or
- (e) Records in any electronic form own abuse or that of others pertaining to sexually explicit acts with children, shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with a fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees:

Provided that provisions of section 67, section 67A and this section do not extend to any book, pamphlet, paper, writing, drawing, painting representation or figure in electronic form—

- (i) The publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting representation or figure is the interest of science, literature, art or learning or other objects of general concern; or
- (ii) Which is kept or used for bona fide heritage or religious purposes.

Explanation– For the purposes of this section, children means a person who has not completed the age of 18 years.”

Section 67B makes provision for criminalizing child pornography on computers which applies to social media also.

“ Preservation and retention of information by intermediaries⁷–

- (1) Intermediary shall preserve and retain such information as may be specified for such duration and in such manner and format as the Central Government may prescribe.
- (2) Any intermediary who intentionally or knowingly contravenes the provisions of sub-section (1) shall be punished with an imprisonment for a term which may extend to three years and also be liable to fine.”

Section 67C provides for the preservation and retention of information by intermediaries which is relevant for social media also.

Power to issue directions for interception or monitoring or decryption of any information through any computer resource⁸.–

- (1) Where the Central Government or a State Government or any of its officers specially authorized by the Central Government or the State Government, as the case may be, on this behalf may, if satisfied that it is necessary or expedient so to do, in the interest of the sovereignty or integrity of India, defense of India, security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offense relating to above or for investigation of any offense, it may subject to the provisions of sub-section(2), for reasons to be recorded in writing, by order, direct any agency of the appropriate Government to intercept, monitor or decrypt or cause to be intercepted or monitored or decrypted any information generated, transmitted, received or stored in any computer resource.
- (2) The procedure and safeguards subject to which such interception or monitoring or decryption may be carried out, shall be such as may be prescribed.
- (3) The subscriber or intermediary or any person in charge of the computer

resource shall, when called upon by any agency referred to in subsection (1), extend all facilities and technical assistance to—

- (a) Provide access to or secure access to the computer resource generating, transmitting, receiving or storing such information; or
 - (b) Intercept, monitor, or decrypt the information, as the case may be; or
 - (c) Provide information stored in computer resources.
- (4) The subscriber or intermediary or any person who fails to assist the agency referred to in sub-section (3) shall be punished with imprisonment for a term that may extend to seven years and shall also be liable to a fine.

Power to issue directions for blocking for public access of any information through any computer resource⁹—

- (1) Where the Central Government or any of its officers specially authorized by it on this behalf is satisfied that it is necessary or expedient so to do, in the interest of sovereignty and integrity of India, defense of India, security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offense relating to above, it may subject to the provisions of sub-section (2), for reasons to be recorded in writing, by order, direct any agency of the Government or intermediary to block for access by the public or cause to be blocked for access by the public any information generated, transmitted, received, stored or hosted in any computer resource.
- (2) The procedure and safeguards subject to which such blocking for access by the public may be carried out, shall be such as may be prescribed.
- (3) The intermediary who fails to comply with the direction issued under sub-section (1) shall be punished with an imprisonment for a term that may extend to seven years and also be liable to a fine.

Thus, section 69A says that government has the right to ban or stop public access to any information that is not consistent with provisions of the government, and this section also provides the procedure of blocking access of the public to certain information. Who doesn't comply with this provision will be punished with imprisonment for a term that may extend to seven years and shall also be liable to pay a fine.

At last, we can say that the society and the use and application of social media will keep ever-changing. Uncontrolled and irresponsible media including social media is dangerous for the society. The Indian Government has attempted to regulate the social/digital media through the Information Technology (Intermediary

Guidelines and Digital Media Ethics Code) Rules, 2021 but it is not foolproof. Several issues have to be addressed regarding the implementation of these rules. Society and legal systems will have to think and adopt ways and means to regulate social media so that it is not detrimental to the society. India will have to regulate the social media so as to meet the needs of the hour keeping in mind the peculiar situation of Indian society which is full of diversity in many respects.

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